



Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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Cancellation of excise tax advisories

This bulletin identifies additional Excise Tax Advisories (ETAs) that have been cancelled. These advisories have been cancelled for a number of reasons. In some cases a particular advisory may have been superseded by legislation, may no longer be correct because of a court decision, or may no longer be necessary because of specific inclusion in a subsequent rule revision.

This advisory is the fourth supplement to ETA 2003. ETA 2003 and previous supplements to ETA 2003 should not be discarded. ETA 2003 and its supplements provide a history of all of the advisories that have been cancelled.

Advisory cancelled August 8, 2001:

ETA	Title	Reason for cancellation
367.04.172	Clearing land and moving earth for commercial farmers	<p>This document addresses the taxability of a taxpayer removing stumps and constructing roads for farmers. It is correct with respect to the removal of stumps from and constructing roads on land that is not currently being used for producing agricultural crops and/or existing agricultural land in preparation for a nonagricultural use (e.g., a housing development). These are retail sales subject to the retailing B&O and retail sales taxes.</p> <p>This document can be misleading with respect to removing stumps from an existing orchard in preparation for continued cultivation of agricultural crops, which the Department considers a horticultural service subject to the service and other activities B&O tax.</p>

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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Please direct comments to:
Department of Revenue
Legislation & Policy Division
P O Box 47467
Olympia, Washington 98504-7467
(360) 570-6123 eta@DOR.wa.gov

Advisory cancelled September 6, 2001:

321.16.179/224	Air taxi service, chartered flights and student training fees	<p>This document explains the taxability of services performed using aircraft in light of the U.S. Supreme Court decision in <u>Aloha Airlines v. Director of Taxation of Hawaii</u>, 464 U.S. 7 (1983). It also provides a nonexclusive list of activities performed with aircraft, and the B&O tax classification for each. The document contains erroneous information (e.g., the tax-reporting instructions regarding air ambulance operations, sightseeing flights, and hauling of logs).</p> <p>A new ETA 2006.16.179 was adopted to provide updated information in this area.</p>
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Advisories cancelled September 14, 2001*:

020.08.103	Catalogues purchased within the state for distribution without	<p>This document explains that retail sales tax is due on the purchase of catalogues and price lists if delivery is taken in Washington, even if the catalogues and price lists are subsequently distributed outside the state. This document is no longer needed. WAC 458-20-193(6) (Inbound and outbound interstate sales of tangible personal property) currently explains that sales tax applies when goods are delivered instate, even if the purchaser may use the goods elsewhere.</p>
088.04.111	Deduction of advances and reimbursements	<p>This document explains that amounts received by a person primarily responsible and liable for paying the salaries of ticket sellers, service employees, and maintenance employees at an event are subject to tax. These amounts do not qualify as an “advance” or “reimbursement” even if no profit is realized.</p> <p>While this document provides accurate information, it is no longer needed. WAC 458-20-111(Advances and reimbursements) currently explains that the terms “advance” and “reimbursement” apply only when a taxpayer has no personal liability, either primarily or secondarily, other than as agent for a customer or client for the payment of fees or costs. In addition, Det. 89-275, 11 WTD 013, addresses a situation where a nonprofit organization arranges luncheons, seminars, and meetings, and explains that amounts received by the organization from its members or other persons are not true reimbursements when the organization is liable for payment of the services.</p>

162.04.193	Cartage, storage and handling of goods moving in interstate commerce	ETA 162 explains that cartage, storage, and handling (of liquor in the present situation) are purely local activities even if the goods are moving in interstate commerce at the time the services are performed. ETA 175 explains that arranging for the shipping, receiving, and handling of goods are local activities regardless that the activities may be closely connected with interstate commerce. Income derived from these local activities is subject to the B&O tax.
175.04.193	Local services connected with interstate transactions	These documents are no longer needed. WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate and foreign commerce) sufficiently addresses the taxability of these activities.
179.08.103	Credit bureau business, charges for credit information, and the retail sales tax.	This document explains that the term "credit bureau business" encompasses all persons receiving income from furnishing credit information. The manner in which the information is secured is deemed immaterial. While this information is correct, Det. 89-89R, 13 WTD 9 (1993), provides a much more comprehensive explanation of what is encompassed by "credit bureau business."
283.08.211	Sales tax liability on lease-purchase agreements	This document explains that when a lessee receives title to leased property under a lease-purchase plan, sales tax applies only on the additional consideration paid over and above the amount of the rental payments. It also explains that sales tax applies to gross income, which includes amounts for interest or carrying charges and property taxes that are paid by the lessee. ETA 283 is no longer needed. WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) was revised in 1996 in part to address these issues.
360.08.237	Retail sales tax: Constitutional issues	This document explains that there are no constitutional issues with respect to RCW 82.08.050's requirement that businesses to account for and pay over sales taxes due from their customers. This document is no longer needed.
397.04.140	Photofinishing for out-of-state customers	This document explains that photofinishing is a manufacturing activity subject to the manufacturing or processing for hire B&O tax. WAC 458-20-140 (Photofinishers and photographers) currently provides this information. The ETA is also not entirely accurate as it excludes information on how manufacturers report multiple activities and claim a multiple activities tax credit (MATC).

506.04.193B	Nexus presumption	These documents identify specific situations/activities in which an out-of-state seller establishes nexus within this state and is subject to the B&O tax.
508.04.193B	Nexus: Employees of seller's agent.	
509.04.193B	Business and occupation tax on local services of nonselling resident managers.	These documents are no longer needed. WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property), specifically subsection (7), and various WTDs issued by the Department (e.g., Det. 97-061, 18 WTD 211; Det 98-134, 18 WTD 085; Det. 97-235, 17 WTD 107; Det. 91-075, 10 WTD 429; Det. 88-219, 6 WTD 019; Det. 87-342, 4 WTD 229; Det. 86-286, 4 WTD 051) provide sufficient guidance in these areas.
520.04.211	Water conditioning services	This document explains that income from an agreement in which the seller agrees to rent property and perform some service in connection with that property (in the present situation the rental of a water softener with periodical servicing) is a retail sale. This document is no longer needed. WAC 458-20-211 (Leases or rentals of tangible personal property, bailments) adequately addresses the taxability of these types of agreements.
560.04.193	Delivery – Goods originate outside Washington	This document provides tax-reporting information for certain interstate sales and deliveries completed prior to January 1, 1992. Readers are referred to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for determining taxability on and after this date. This information is no longer needed because it addresses transactions outside the statutory claim period provided by RCW 82.32.050.

*Note: The notice the Department filed with the Code Reviser announcing the repeal of ETAs cancelled September 14, 2001, inadvertently listed ETA 537.04.19301 (Effective date for claiming MATC credits) as a document being cancelled. ETA 537 had previously been cancelled June 30, 2000 (ETA 2003-2s).